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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,753	02/16/2006	Hiromi Nambu	271767US0PCT	1649

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EXAMINER	
MERCIER, MELISSA S	
ART UNIT	PAPER NUMBER
1615	

NOTIFICATION DATE	DELIVERY MODE
08/20/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/534,753	NAMBU ET AL.	
	Examiner	Art Unit	
	Melissa S. Mercier	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,11,14,17,20 and 22-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,11,14,17,20 and 22-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Summary

Receipt of Applicants Remarks and Amended Claims filed on May 30, 2007 is acknowledged. Claims 1, 4, 11, 14, 17, 20, and 22-29 are pending in this application. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4, 11, 14, 17, 20, 22-26, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshinaga et al. (US Patent 5,973,042) in view of Shin (US Patent 4,937,069).

Yoshinaga discloses water-absorptive polymer particles having a cross linked structure and comprises as its constituent a carboxyl group and/or a carboxylated group (column 3, lines 35-42). Preferable examples of such a polymer include a cross linked polyacrylic acid salt, a cross linked graft copolymer of starch and an acrylic acid salt, a saponified product of a cross linked starch-acrylonitrile graft copolymer, a saponified product of a cross linked acrylic ester-vinyl acetate copolymer, a cross linked acrylic acid salt-acrylamide copolymer, and a saponified product of a cross linked polyacrylonitrile (column 3, lines 35-59). The water-absorptive polymer can be surface modified with a silane compound including the aminosilanes (column 5, lines 13-18), which read upon the instantly claimed silicone compounds. The mean particle diameter of the highly water-absorptive polymer is from 10-2000um. Numerous aluminum, zirconium, and zinc compounds are disclosed for use (columns 5-6). Yoshinaga discloses the polymer and metal compounds can be mixed together into a composition

(column 7, lines 35-52). Table I-3 discloses water absorption of several polymer compositions, which read on the instant claims.

Yoshinaga does not disclose the aluminum, zirconium, and zinc compounds used are anti-perspiring components, a carrier for a cosmetic composition, or a method of controlling perspiration.

Shin discloses an antiperspirant suspension comprising astringent aluminum or zirconium compounds or complexes or mixtures thereof. Typical antiperspirant actives include impalpable aluminum chlorohydroxide and aluminum hydroxy-bromide, aluminum chloride as well as the aluminum/zirconium/glycine antiperspirant complexes (column 2, lines 50-63). Shin additionally discloses the use of thickening/solid emollients including cyclomethicone (column 5, lines 9-28). Based on a review of the instant examples on page 45 of the specification, 39.2% to 43.2% by weight of the composition is cyclomethicone. The examiner is interpreting the claimed carrier to be the cyclomethicone.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have selected specific aluminum, zirconium, and zinc components, including chlorohydroxides, disclosed by Shin, with the water absorbing particles of Yoshinaga in order to make the cosmetic composition capable of controlling perspiration since Yoshinaga discloses the excellent absorption qualities of the particles and the addition of metal compounds.

Claims 1, 4, 17, 20, 23, 24-25, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karakelle et al (US Patent 5,091,443) in view of Shin (US Patent 4,937,069).

Karakelle discloses a gelling composition comprising starch-polyacrylate graft copolymer particles modified with a silane-coupling agent (abstract, see column 3, lines 39-57). Karakelle discloses a particle size of 20-200 (column 3, lines 34-36). Polyacrylate gelling agents, such as metal salts, including aluminum, are disclosed (column 4, lines 24-34).

Karakelle does not teach the addition of an antiperspirant compound.

Shin discloses an antiperspirant suspension comprising astringent aluminum or zirconium compounds or complexes or mixtures thereof. Typical antiperspirant actives include impalpable aluminum chlorohydroxide and aluminum hydroxy-bromide, aluminum chloride as well as the aluminum/zirconium/glycine antiperspirant complexes (column 2, lines 50-63). Shin additionally discloses the use of thickening/solid emollients including cyclomethicone (column 5, lines 9-28). Based on a review of the instant examples on page 45 of the specification, 39.2% to 43.2% by weight of the composition is cyclomethicone. The examiner is interpreting the claimed carrier to be the cyclomethicone.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have incorporated the gelling composition taught by Karakelle with the antiperspirant composition taught by Shin since Karakelle discloses his composition imbibes water without clumping at room temperature.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshinaga et al. (US Patent 5,973,042) and Shin (US Patent 4,937,069) in view of Urry (US Patent 5,393,602); or in the alternative Karakelle et al (US Patent 5,091,443) and Shin (US Patent 4,937,069) in view of Urry (US Patent 5,393,602).

The combined teachings of Yoshinaga-Shin and Karakelle-Shin are discussed above and applied in the same manner.

Neither set of teachings discloses the use of polymethacrylate polymer particles.

Urry discloses super absorbent materials that have controlled absorbent properties that can be varied with temperature or contact with liquids. The materials are selected to be in a contracted or swollen state initially, depending on the intended use (abstract). Antiperspirant uses are disclosed (column 1, lines 15-24). Polymethacrylates are disclosed as a preferred polymer (column 5, lines 17-19).

It would have been obvious to a person of ordinary skill in the art a the time the invention was made the have used the polymer taught by Urry with the compositions taught by Yoshinaga-Shin or Karakelle-Shin since Urry discloses the polymethacrylate polymers are super absorbent and they have an inverse temperature transition, making it ideal for use in a variety of environments requiring absorbance of aqueous liquids (column 5, lines 12-16).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In *re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4, 11, 14, 17, 20, and 22-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8, 10, 12, 15, and 24 of copending Application No. 10/137,405 in view of Yoshinaga et al. (US Patent 5,973,042) and Shin (US Patent 4,937,069). The combined teachings of Yoshinaga and Shin are discussed above. Yoshinaga discloses the particles of the instant claims coupled with a metal component. Shin is relied on for specific antiperspirant metal compounds. This is a provisional obviousness-type double patenting rejection.

Conclusion

No claims are allowable. Due to the new grounds of rejection, this action is made Non-Final. Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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